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## Proposals 59, 336, 588, and 809 RELATING TO THE LAND USE COMMISSION

Statement for  
Con Con Committee on  
Environment, Agriculture, Conservation and Land  
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by  
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Proposals 59, 336, 588, and 809, although differing in detail, would add Constitutional as well as statutory authority to the establishment and functions of the State Land Use Commission. This statement commenting on all four proposals does not reflect an institutional position of the University of Hawaii.

Except for the functions of education the functions of the executive branch of government are not placed in specific departments, boards, or commissions by the Constitution but left to the legislature. The Land Use Commission was established under legislation and its functions have been defined by the legislature. There appears to be no significant risk that it will be abolished by the legislature. Hence, the practical effects of possible constitutional provisions regarding the Commission are limited to differences between its composition and functions as these now exist and as they would be prescribed in the Constitution.

Each of the proposals considered here addresses the question of the composition of the Land Use Commission. Each proposes a manner of selection of its members or a number of its members different from the manner or number now required, but the proposals differ among themselves in these respects. Some of the proposals have provisions designed to prevent or at least reduce possible biases resulting from financial ties between the commissioners and private employers. We note that such biases may be reduced by requiring that commissioners not participate in decisions involving such ties. Otherwise the choices among means of selection and numbers of commissioners involve subjective judgements that are not within the province of the Environmental Center.

In Proposal 588, the Land Use Commission would have to include experts in four fields that are important in land-use decisions. The intent is clear, but the inclusion of four experts will not assure wisdom even in the aspects of the decisions involving

their fields of knowledge. No single expert could provide all of the pertinent information in his field, and the needs of the Land Use Commission for expert advice would be met better by making available to it the advice of experts in the State government and additional experts as necessary by contract, and by opening up the rationale for its proposed decisions to the review of experts in the community in general, than by the means proposed.

Proposals 336, 588 and 809 would place all powers to make decisions regarding land use in the State. It should be recognized that zoning, which is now a county function is a form of land-use control; that present distinctions between land-use control at the State level and zoning at the County level is determined by statute, not by the Constitution; and hence that an effect of the proposal would be to nullify all zoning powers of the counties. Although the proper balance of state vs county authority is not within the province of the Environmental Center, we question whether this is the intent of the proposers of these provisions.

Proposals 336 and 588 would restrict the land reclassification activities of the Land Use Commission to systematic revisions at intervals of five years. This would seem quite inappropriate with respect to county-level zoning changes, but would have certain advantages with respect to the broader land-use management now placed in the Land Use Commission in that the Commission would be able to consider simultaneously all proposals for changes in the boundaries of land-use-districts and weigh their environmental impacts as well as other impacts against each other. It would have the disadvantage, however, that land-use changes whose desirability became apparent within the five-year periods would have to wait until the end of the five-year periods, no matter how great their desirability even from a public standpoint.

Proposal 588 would involve the use of environmental impact statements in arriving at land-use decisions. However, the criterion it would establish that a significant, unavoidable adverse environmental impact should bar further consideration of an application for a land-use reclassification is clearly unwise. Most new land uses will result in some significant environmental detriments, and many of these detriments will be unavoidable. However, the same land uses may result in distinct benefits. The proposed language would prevent any consideration of the tradeoffs between the benefits and the detriments in the decision making.

The Environmental Center, in a recent report on the Hawaii State Environmental Impact Statement system suggested that EIS's should be required for boundary changes in the Conservation District, and for changes in the use of prime agriculture land if coupled with a special use permit requirement. The EIS should be done far enough in advance of final planning so that environmental consideration can be given in the final project planning stages.

Another feature of Proposal 588 would be the addition of a referendum to the procedure of making boundary changes. The issue of representation vs direct participatory public involvement in decision making is not a matter that the Center can comment on. However, certain drawbacks in the referendum scheme proposed in Proposal 588 should be recognized.

The referendum as proposed would be limited to people living in the precinct in which the boundary is changed. Some land use decisions have impacts on the environment or on access to environmental resources that are of concern to persons living across an entire island or the State as a whole. Yet only those residing in the immediate vicinity of the lands whose use is to be changed would be able to vote on the changes. A referendum process such as that proposed could easily lead also to exclusionary zoning.

The desirability of retaining some flexibility in land-use decisions greater than that provided in some of these proposals, although perhaps not as great flexibility as is now provided, suggests that the entire matter of land use might best remain for legislative rather than Constitutional determination.